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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DENNIS E. SMITH, TEH-MING KUNG, THOMAS M. LANEY
and JOHN L. MUEHLBAUER

Appeal 2008-4702
Application 10/033,457
Technology Center 1700

Decided:¹ March 10, 2009

Before BRADLEY R. GARRIS, PETER F. KRATZ, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON APPEAL

Appellants seek review under 35 U.S.C. § 134 from the Examiner's rejections of claims 1, 2, 5, 7-19, 21, 22, 24-40, 42, and 43 in the Office Action dated August 8, 2008. This Board has jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

STATEMENT OF THE CASE

The invention of the present application is directed to an article, such as synthetic paper, comprising a continuous first polymer with dispersed microbeads of a second polymer which are bordered by void space. Claim 1 is illustrative and reproduced below:

1. A shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, said microbeads being bordered by void space, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, wherein the microbeads are thermally stable, experiencing a 2% weight loss above 270°C, wherein the microbeads have a change in CIELAB value b* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b* is less than or equal to 0.2.

The Examiner relies on the following prior art as evidence of anticipation and obviousness of the rejected claims:

Hart	5,059,579	Oct. 22, 1991
Harrison	5,100,862	Mar. 31, 1992
Maier	5,275,854	Jan. 4, 1994
Saito	6,043,194	Mar. 28, 2000

Appellants seek review of the following rejections maintained by the Examiner:

1. Claim 1, 21, and 42 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 stand rejected under 35 U.S.C. § 102(b) as anticipated by Maier.
3. Claims 18, 19, 37, and 38 stand rejected under 35 U.S.C. § 103(a) as obvious over Maier.
4. Claims 8 and 27 stand rejected under 35 U.S.C. § 103(a) as obvious over Maier in view of Saito.
5. Claim 40 stands rejected under 35 U.S.C. § 103(a) as obvious over Maier in view of Hart.
6. Claims 42 and 43 stand rejected under 35 U.S.C. § 103(a) as obvious over Maier in view of Harrison.

With regard to rejection 1, Appellants argue the claims as a group. Accordingly, we select claim 1 as the representative claim on which to render our decision.

With regard to rejections 2-6, Appellants make the same argument with regard to each ground of rejection, which is directed to the same features in independent claims 1, 21, and 42. No substantive arguments are directed to features found only in the other rejected claims. Accordingly, we select claim 1 as the representative claim for rejection 2. With regard to rejections 3-5, we render our Decision with respect to each rejection by focusing on the same arguments directed to the same claim 1 features, which

argued features are incorporated in all the rejected dependent claims. With regard to rejection 6, we select claim 42 as the representative claim on which to render our decision.

The §112, Second Paragraph, Rejection

The Examiner determined that the claim limitation “after one week exposure to UV light of 50 Klux” was conditional such that the scope of the claim cannot be ascertained when read in light of the Specification (Ans. 3-4). The Examiner further determined that the use of the claim phrase “CIELAB value” renders the claims indefinite because it is a tradename or standard (Ans. 4).

Appellants argue that one of ordinary skill in the art would understand that the change in b^* value would require that the microbeads of the article have actually been exposed to UV light in accordance with the claimed “exposure to UV light” feature (App. Br 4-7). Appellants further argue that one of ordinary skill in the art would understand that the “CIELAB value b^* ” feature is an acronym for a descriptive standard describing color space, which does not change over time and has been available since at least 1976 (App. Br. 7-8).

ISSUE

Have the Appellants shown the Examiner reversibly erred in determining the claim features “after one week exposure to UV light of 50 Klux” and “CIELAB value b^* ” fail to particularly point out and distinctly claim the subject matter which Appellants regard as the invention? We answer these questions in the affirmative.

PRINCIPLES OF LAW

The test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986).

FINDINGS OF FACT

1. The Specification states “[t]he prepared test samples (~4”x5”) were exposed to UV simulating high intensity sunlight (50 Klux) for one week. For yellowness measurement, GRETAG SPM 100 spectrophotometer was employed to measure the b^* (yellowness) value in the CIELAB color space (Spec. 18: 31 – 19: 2).

2. The Specification states, “ Δb^* is the change of b^* after 1 week high intensity sunlight exposure; the higher the Δb^* value, the more the undesirable shift towards yellowness” (Spec. 19: 2-4).

3. The Specification contains Table 1, listing the results of yellowness evaluations of various microbead polymer compositions (Spec. 20).

4. Table 1 contains the results of a microbead composition of 70% methyl methacrylate and 30% divinyl benzene. This composition exhibited a Δb^* of 0.254 (Spec. 20, Table 1, 1. 2).

5. Table 1 contains the results of a microbead composition of 90% methyl methacrylate and 10% divinyl benzene. This composition exhibited a Δb^* of 0.150 (Spec. 20, Table 1, 1. 3).

6. Table 1 contains the results of a microbead composition of 70% methyl acrylate and 30% diethylene glycol dimethacrylate. This composition exhibited a Δb^* of 0.074 (Spec. 20, Table 1, l. 6).

7. Exhibit LMBA-1², attached to Appellants' Brief, describes the CIELAB color model, developed by the Commission Internationale d'Eclairage, established in a 1976 standard. The model is based on three orthogonal axes, labeled L^* , a^* and b^* , which are used to describe values of a color in terms of luminescence, the green/magenta continuum and the blue/yellow continuum, respectively. Values of increasing b^* are perceived to be more yellow (LMBA-1 1). CIELAB is an acronym for Commission Internationale d'Eclairage ($L^* a^* b^*$) (LMBA-2³ 1).

8. Exhibit LMBA-3⁴, attached to Appellants' Brief, describes the CIELAB color space as the most accurate way to measure and reproduce color. It incorporates the components of color – hue and chroma – from earlier models, and adds a component of brightness. (LMBA-3 3).

ANALYSIS

“After one week exposure to UV light of 50 Klux”

The Examiner contends the phrase, “after one week exposure to UV light of 50 Klux” is indefinite because it cannot be ascertained by one skilled in the art whether the claim requires exposure to UV light of 50 Klux for a

² Exhibit LMBA-1 was originally filed June 19, 2006 by Appellants as part of their Request for Continued Examination (RCE).

³ Exhibit LMBA-2 was originally filed June 19, 2006 by Appellants as part of their Request for Continued Examination (RCE).

⁴ Exhibit LMBA-3 was originally filed June 19, 2006 by Appellants as part of their Request for Continued Examination (RCE).

period of one week, or if the phrase is a “way of characterizing the claimed final article (by exposing the final article [that has not been exposed to light] to UV light of 50 Klux for one week, and determining the change in b^* value over the course of the week)” (Ans. 10-11). The Examiner concludes that the claim is not clear whether it requires the article to be actually exposed to UV light of 50 Klux for a period of time of one week (Ans. 3-4).

By the plain meaning of the disputed phrase, one skilled in the art would be apprised that the scope of the claim encompasses those materials exhibiting the specified property after the material had been exposed to UV light of an intensity of 50 Klux for a period of one week. This is consistent with Appellants’ Specification, which provides an example of a yellowing test, in which “test samples were exposed to UV [light] simulating high intensity sunlight (50 Klux) for one week” (FF 1). In other words, one of ordinary skill in the art would understand the meaning of the disputed claim phrase when read in light of the Specification.

Therefore, we reverse the Examiner’s § 112, second paragraph, rejection of the claims for the claim phrase “after one week exposure to UV light of 50 Klux” for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention.

“CIELAB value b^* ”

The Examiner also contends the claims are indefinite under §112 because of the use of the phrase, “CIELAB value b^* .” The Examiner contends that “CIELAB” is either a trademark or a standard (Ans. 4).

As to the Examiner’s contentions about a trademark, we find in the record no evidence that the claim term is, or is used as, a trademark. To the

contrary, CIELAB is an acronym for Commission Internationale d'Eclairage (L^* a^* b^*) (FF 7).

While CIELAB appears to be incorporated within an industry standard, CIELAB itself refers to a color model, used to describe color spaces in terms of their components of hue, chroma and brightness (FF 8). The color model describes the components of color according to values on three orthogonal axes, referred to as L^* , a^* and b^* . The b^* axis describes a color continuum between blue and yellow (FF 7).

Contrary to the Examiner's position, we determine that one of ordinary skill in the art would be apprised of the scope of the claim phrase. While various aspects of the standard may be revised and supplemented, the basic framework and core of the CIELAB standard remains constant in the method of describing a color in terms of values of L^* , a^* and b^* and one of ordinary skill in the art would understand what is claimed when read in light of the Specification.

Accordingly, we reverse the § 112, second paragraph, rejection of the claim phrase "CIELAB value b^* " as failing to particularly point and distinctly claim the subject matter which Appellants regard as the invention.

The §102 and §103 Rejections

In their Brief, Appellants raise one common issue in traversing the §102 and §103 rejections. This issue is analyzed herein with respect to all the prior art rejections

Appellants contend Maier does not disclose a microbead made of a polymer that: (1) comprises less than 10% styrenic monomers, (2) is thermally stable, experiencing a 2% weight loss above 270°C (hereinafter referred to as "thermally stable" or "thermal stability"), and (3) has a change

in CIELAB value b^* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b^* is less than or equal to 0.2 (hereinafter referred to as “non-yellowing”) (App. Br. 13, 15, 21, 24, 27 and 31).

In the context of each of the § 103 rejections, Appellants further argue that the claimed shaped article has unexpected results with regard to the non-yellowing and thermal stability properties, and that there is no likelihood of success or suggestion for achieving the claimed properties (App. Br. 21, 25, 28, 32). Appellants further argue that neither Maier, nor any of the secondary references recognize the problem of thermal stability or yellowness of microbeads. (App. Br. 20, 24-25, 27-28, 31).

The Examiner found Maier expressly discloses the limitation of a microbead made of second polymer comprising less than 10% styrenic monomers such that Maier’s composition is the same as the claimed composition and, thus, inherently possesses the claimed thermal stability and non-yellowing properties (Ans. 5 and 14). The Examiner’s § 103 rejections regard claim features other than the amount of styrenic monomers, or the non-yellowing or thermal stability properties in the particular claims (Ans. 6-10). In other words, the Examiner’s § 103 rejections all rely on Maier as explicitly disclosing compositions having amounts of styrenic monomers falling within the claimed range and inherently possessing the claimed non-yellowing and thermal stability properties.

ISSUE

Have the Appellants shown the Examiner reversibly erred in finding Maier discloses a microbead made of a second polymer as claimed with less

than 10 wt.% styrenic monomer and thus, inherently possessing the claimed thermal stability and non-yellowing properties? We answer this question in the negative.

PRINCIPLES OF LAW

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). The question whether a claim limitation is inherent in a prior art reference is a factual issue on which evidence may be introduced. *Id.*

“It is elementary that the mere recitation of a newly discovered function or property, inherently possessed by things in the prior art, does not cause a claim drawn to those things to distinguish over the prior art. Additionally, where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied upon.” *In re Best*, 562 F.2d 1252, 1254-55 (C.C.P.A. 1977). Where the claimed and the prior art products are identical or substantially identical, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of the claimed product. *Id.* at 1255. Whether the rejection is based on inherency under § 102 or obviousness under § 103, jointly or alternatively, the burden of proof is the same. *Id.*

An anticipation rejection cannot be overcome by a showing of unexpected results or teaching away in the art. *In re Malagari*, 499 F.2d 1297, 1302 (CCPA 1974).

FACTUAL FINDINGS (FF)

9. The Specification describes suitable monomers for the microbeads satisfying the styrenic amount required by the claimed invention may include methyl methacrylate or diallylphthalate, for example. (Spec. 7-9).

10. “Styrenic monomer” means “any vinyl aromatic compounds, whether substituted or not, such as styrene, t-butyl styrene, ethylvinylbenzene, chloromethylstyrene, vinyl toluene, styrene sulfonylchloride, and divinylbenzene” (Spec. 9).

11. The Specification contains Table 4, listing the results of thermal stability for combinations of methacrylic linear and acrylic crosslinking monomers in microbeads (Spec. 22).

12. Table 4 contains the results of a microbead composition of 70% methyl acrylate and 30% diethylene glycol dimethacrylate. This composition exhibited a 2% loss at 300° C. (Spec. 22, Table 4, l. 1).

13. Maier discloses shaped articles such as films having an oriented polymer continuous phase and polymer microbeads dispersed therein which are at least partially bordered by voids (col. 1, ll. 15-19).

14. Maier discloses a microbead that is cross-linked to an extent that it will be resilient and elastic at an orientation temperature (col. 13, ll. 64-68; col. 14, ll. 1-2; col. 17, ll. 33-35).

15. Maier discloses a composition having superior thermal and chemical stability (col. 3, ll. 9-12).

16. Maier discloses a composition which is extremely white and virtually free of yellowing over time (col. 5, l. 67 – col. 6, l. 2).

17. Maier discloses a microbead polymer comprising a monomer which may be methyl methacrylate and methyl acrylate, also styrene, butyl acrylate, acrylamide, acrylonitrile, ethylene glycol dimethacrylate, vinyl pyridine, vinyl acetate, vinylbenzyl chloride, vinylidene chloride, acrylic acid, divinylbenzene, acrylamideomethylpropane sulfonic acid, and vinyl toluene. (col. 7, ll. 47-53).

18. Maier discloses a microbead crosslinking agent including divinylbenzene and diethylene glycol dimethacrylate, as well as diallyl fumarate, diallyl phthalate and mixtures thereof (col. 7, ll. 44-46).

19. Maier exemplifies microbead composition of 30% divinylbenzene cross-linking agent with 70% methyl methacrylate (col. 18, Table 3, Ex. 15 and 17, together with col. 17, ll. 17-18).

20. Maier exemplifies microbead composition of 5% divinylbenzene cross-linking agent with 95% methyl methacrylate (col. 18, Table 3, Ex. 16 and 18, together with col. 17, ll. 17-18).

21. The §132 Declaration of Dennis E. Smith, dated November 3, 2003 (the “Smith Declaration”) provides the results of thermal stability (2% loss) for 70% methyl methacrylate / 30% divinyl benzene and for 90% methyl methacrylate / 10% divinyl benzene as 300°C and 260°C, respectively (Smith Declaration 2).

22. The Smith Declaration indicates that thermal stability of a 5% crosslink monomer, per the examples of Maier, has not been measured (Smith Declaration 2). Instead, the Smith Declaration extrapolates the results of FF 21 to conclude that a composition of 95% methyl methacrylate

/ 5% divinyl benzene would exhibit a 2% loss at <260°C (Smith Declaration 2).

Does Maier Disclose a Thermally Stable, Non-Yellowing Second Polymer with less than 10 wt.% Styrenic Monomer?

The Examiner rejected all pending claims under §102 or §103 on the basis of Maier alone, or with Maier as the primary reference. With regard to each rejection, the Appellants contend that Maier does not teach a microbead comprising a second polymer that: (1) comprises less than 10% styrenic monomer, (2) is thermally stable and (3) is non-yellowing (App. Br. 11-32).

With regard to each § 103 rejection, Appellants do not contest the Examiner's obviousness conclusions in light of the applied prior art with regard to the claim features the Examiner determined to be absent from Maier (App. Br. 15-32). Rather, Appellants' arguments focus on the inherency of the thermal stability and non-yellowing properties, which the Examiner found to be inherently possessed by Maier. Appellants contend that the Smith Declaration provides evidence of unexpected results with the regard to the thermal stability and non-yellowing properties (App. Br. 21). Appellants also argue that there is no likelihood of success or reason for modifying Maier's shaped article composition to achieve a microbead having the claimed thermal stability and non-yellowing properties (App. Br. 21, 25, 28, 32). Appellants further argue that the applied prior art does not recognize a problem with yellowing or thermal stability of the microbeads (App. Br. 20, 24-25, 27-28, 31).

Maier discloses shaped articles having an oriented polymer continuous phase and polymer, crosslinked microbeads dispersed in the continuous phase which are at least partially bordered by voids (FF 13). The

microbead polymer is formed from the polymerization of a linear monomer, such as methyl methacrylate, methyl acrylate, acrylamide, acrylonitrile and several dimethacrylate monomers (FF 17-18), together with a cross-linking agent, such as divinylbenzene, diallyl fumarate and diallyl phthalate (FF 18).

Like Maier, Appellants discloses that suitable monomers satisfying the claimed styrenic monomer amount may include methyl methacrylate or diallylphthalate as monomers (FF 9). Appellants do not dispute the Examiner's finding that methyl methacrylate does not contain styrenic monomers (i.e., 0%) such that the claim requirement is satisfied (Ans. 4-5).

Moreover, Appellants do not dispute that Maier exemplifies using methyl methacrylate monomers and divinylbenzene crosslinking agent (a styrenic monomer) to form the microbeads, wherein the amount of divinylbenzene is 5 mol. % (6.4 wt.%) and, thus, falls within Appellants' claimed range (FF 20) (App. Br. 18). Thus, Maier discloses and exemplifies a shaped article made of materials in the amounts required by claim 1 such that Maier plainly teaches a shaped article having "less than 10 wt.% styrenic monomers" as claimed.

Therefore, since Maier discloses a composition of the shaped article is substantially identical to Appellants' claimed invention, it reasonably appears that Maier's shaped article would inherently possess the characteristics of being thermally stable and non-yellowing as claimed. *Best*, 562 F.2d at 1254-55. Indeed, Maier discloses its composition exhibits superior thermal and chemical stability (FF 15). It also discloses its composition is virtually white and free from yellowing over time (FF 16). Accordingly, the burden was properly shifted to Appellants to show that Maier's shaped article does not inherently or necessarily exhibit the claimed

thermal stability and non-yellowing characteristics. *Best*, 562 F.2d at 1254-55.

Appellants attempt to satisfy this burden by showing in their Brief the characteristics of several explicit examples in Maier. Examples 15-18 in Maier disclose a microbead polymer comprising methylmethacrylate and divinylbenzene in proportions of 70/30 and 95/5 (FF 18 and 19). Appellants draw from data in their Specification, specifically that the composition of 70/30 has a Δb^* of 0.254, while a 90/10 composition is 0.150 (App. Br. 13). From this, Appellants assert, “As can be seen from Table AF-1, the disclosure of Maier does not disclose materials that inherently satisfy the requirement that the microbeads are [non-yellowing]” (App. Br. 14).

We find this assertion unpersuasive, as the Specification lists a composition of 90/10 methylmethacrylate/divinylbenzene, which touches on the claimed styrenic monomer range of the claim limitation and exhibits a Δb^* of 0.150, within the claim range of ≤ 0.20 . Accordingly, it is reasonable to expect Maier’s composition of 95/5 methylmethacrylate/divinylbenzene would inherently have a similar Δb^* value within the claimed range. Appellants have the burden of showing that Maier’s 95/5 PMMA/divinylbenzene composition does not possess the non-yellowing characteristic. The data provided does not satisfy Appellants’ burden.

Appellants similarly try to show the disclosure of Maier fails to disclose microbead polymers having the claimed thermal stability. Appellants point to data from the Smith Declaration, which reports a polymer having a composition ratio of 70/30 of methylmethacrylate / divinylbenzene exhibited a 2% loss at 300°C, while one of 90/10 exhibited a 2% loss at 260°C (FF 9). From these two data points, the Smith Declaration

linearly extrapolates and concludes that a microbead polymer of a composition ratio of 95/5 (equivalent to Examples 14 and 16 in Maier) would have a 2% loss at <260°C (FF 10). From this extrapolation on the methylmethacrylate/divinylbenzene materials, Appellants conclude, “As shown in the Table and [the Specification], thermal stability decreases with decreasing crosslink monomer. This information ... indicates the same trend holds true for methacrylic, acrylic or styrenic crosslink monomers” (App. Br. 18).

We do not find this argument persuasive. Appellants’ conclusions regarding the materials with 5% divinylbenzene were based on a linear extrapolation, without any showing that the relationship between thermal stability and crosslinking monomer lacked any higher ordered relationship that would justify a linear extrapolation. In fact, Appellants entire data set is composed of two points, which do not include a data point which would encompass the 95/5 methylmethacrylate/divinylbenzene data point. Accordingly, we determine the data provided is speculative and insufficient to conclusively establish that a composition of 95/5 methylmethacrylate/divinylbenzene would not possess the claimed thermal stability.

We are unpersuaded by Appellants’ arguments regarding the § 103 rejections. Specifically Appellants argue the likelihood of success, suggestion to combine, and the unexpected results of improved thermal stability and decreased yellowness achieved with the claimed invention. Appellants further argue that Maier and the secondary references fail to recognize problems with thermal stability or yellowing of the microbeads. We note that these arguments are directed to the Examiner’s finding that

Maier explicitly disclose the claimed amount of styrenic monomers and inherently possesses the claimed properties. The Examiner does not rely on any of the secondary references to teach or suggest the argued amount of styrenic monomers or the thermal stability and non-yellowing properties. In fact, Appellants do not dispute that the Examiner's combination of the various secondary references with Maier to meet the various features of the claims rejected under § 103 would have been obvious. Accordingly, we do not see the relevancy of these arguments and evidence of unexpected results to the Examiner's anticipation finding. *Malagari*, 499 F.2d at 1302.

Regardless, the evidence of "unexpected results" provided in the Smith Declaration and the Specification does not establish that unexpected results were achieved. Rather, like Appellants' claimed invention, Maier's examples and disclosure include shaped article compositions that are included within the claimed invention. Maier further discloses that the shaped articles have superior thermal and chemical stability, and are virtually free of yellowing over time (FF 15-16). In other words, Maier discloses that the compositions would have similar properties as Appellants' claimed shaped article. Accordingly, we are not persuaded that the Smith Declaration establishes unexpected results.

We determine Appellants have not satisfied their burden of showing that Maier's shaped article composition does not have less than 10 wt.% styrenic monomers and inherently possesses the claimed a thermal stability and non-yellowing properties. Accordingly, we sustain all of the Examiner's § 102 and § 103 rejections.

CONCLUSIONS

We REVERSE the 35 U.S.C. § 112, second paragraph, rejection of claims 1, 21, and 42 as failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

We AFFIRM the 35 U.S.C. § 102(b) rejection of claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 over Maier.

We AFFIRM the 35 U.S.C. § 103 rejection of claims 18, 19, 37, and 38 as being unpatentable over Maier.

We AFFIRM the 35 U.S.C. § 103 rejection of claims 8 and 27 as being unpatentable over Maier in view of Saito.

We AFFIRM the 35 U.S.C. § 103 rejection of claim 40 as being unpatentable over Maier in view of Hart.

We AFFIRM the 35 U.S.C. § 103 rejection of claims 42 and 43 as being unpatentable over Maier in view of Harrison.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

tc

Appeal 2008-4702
Application 10/033,457

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